Nos. ~~9, 10, 11, 12, 13~~

In the Supreme Court of the United States

OCTOBER TERM, 1945

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, PETITIONER

v.

UNITED STATES OF AMERICA

THE BAY COUNTIES DISTRICT COUNCIL OF CARPENTERS, ETC., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

LUMBER PRODUCTS ASSOCIATION, INC., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL, PETITIONER

v.

UNITED STATES OF AMERICA

BOORMAN LUMBER COMPANY, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

BRIEF FOR THE UNITED STATES ON REARGUMENT

INDEX

CITATIONS

689857—46——1

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 9

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, PETITIONER

v.

UNITED STATES OF AMERICA

No. 10

THE BAY COUNTIES DISTRICT COUNCIL OF CARPENTERS, ETC., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

No. 11

LUMBER PRODUCTS ASSOCIATION, INC., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

No. 12

ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL, PETITIONER

v.

UNITED STATES OF AMERICA

No. 13

BOORMAN LUMBER COMPANY, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

BRIEF FOR THE UNITED STATES ON REARGUMENT

The Court has asked the parties to discuss the following points:

(1) The scope of Section 6 of the Norris-La-Guardia Act in relation to prosecutions under the Antitrust Act.

(2) The scope of Section 6 in relation to Section 13 (b).

(3) The scope of the words "association" or "organization" appearing in Section 6, in that Section's relationship to Section 13 (b).

(4) Consideration of the Court's oral charge and written charges requested and refused involving Section 6, in the light of objections and exceptions by each and all of the defendants and the state of the evidence on that issue as to each of them.

The pertinent provisions of the Norris-LaGuardia Act are set forth in the Appendix, *infra*, pp. 57–58. 58-59

In Point I of this brief we shall discuss the three questions asked by the Court with respect to the general scope of the pertinent provisions of the Norris-LaGuardia Act. In Point II we shall deal with the Court's fourth question and apply the principles discussed in Point I to the charge and the evidence in this case.

We wish to point out in advance, however, that the questions raised by the Court concern only the liability of the labor petitioners. The employer groups either pleaded *nolo* and did not stand trial, thus being in a position only to challenge the validity of the indictment on their appeals, or did not appeal.[1] Furthermore, the portion of the charge most seriously attacked does not relate to the guilt of the individual labor defendants, all of whom individually actively participated in the conspiracy and who were not held liable on any theory of agency (see pp. 43–45, *infra*).

I

THE MEANING OF THE NORRIS-LA GUARDIA ACT

In discussing the first three of the above questions we shall take the liberty of departing from

[1] The employer petitioners in No. 11 have conceded in their brief on reargument (p. 1) that the questions which the Court requested the parties to discuss "appear to pertain to the parties in Cases 9, 10 and 12, and not to the issues in this case."

the order in which they have been stated, so that issues preliminary in nature may be disposed of first.

A

Applicability of the Norris-LaGuardia Act to Sherman Act cases

We do not believe that there can be any doubt that the Norris-LaGuardia Act applies to Sherman Act cases. This would appear not only from its terms, but from the fact that it was designed in large part to overcome decisions against labor rendered under the Sherman Act. See *United States* v. *Hutcheson*, 312 U. S. 219.

B

Does Section 6 apply to criminal cases?

Section 6 is not limited in terms to suits for injunctions. It declares that the persons specified shall not "be held responsible or liable in any court of the United States for the unlawful acts" of officers, members, or agents. The quoted phrase would seem to include criminal as well as civil liability, although, as we shall show, Congress was mainly concerned with protecting unions and their officials against civil actions for damages. See pp. 12–16, *infra*. In any event, the test of liability prescribed in Section 6 is, we believe, the rule properly applicable in criminal cases apart from the Norris-LaGuardia Act, so that the applicability of the statute is immaterial.

C

Whether this case involves a labor dispute within the meaning of Section 6

(1) In *Allen Bradley Co.* v. *Local Union No. 3*, 325 U. S. 797, this Court held that a combination of unions with non-labor groups with a purpose to eliminate competition among or with the latter was "a situation * * * not included within the exemptions of the Clayton and the Norris-LaGuardia Acts" (p. 809). The Court also stated (p. 807, n. 12) that the argument that "no labor disputes existed * * * is untenable". In the light of these statements, we read the opinion as a whole as holding that although the definition of "labor dispute" in Section 13 (*c*) of the Norris-LaGuardia Act may cover a situation in which there is a combination between labor and non-labor groups, the substantive limitations of the Act do not apply to such a combination or the conduct of the labor groups to the extent that they participate in such a combination. But whatever the analysis, we submit that the reasoning which made the Norris-LaGuardia Act insufficient to validate the acts of the combination in the *Allen Bradley* case applies in the instant case as well.

(2) In this case there was unquestionably originally a labor dispute between the employer and employee groups. The Government was not

a party to that dispute. The question may be raised as to whether in this circumstance the Act reaches the prosecution brought by the Government.

That suits by the Government are not exempt from the Act is clear from its history. Among the instances of the abuse of the injunctive process which Congress had in mind was the injunction obtained by Attorney General Daugherty from Judge Wilkerson in the shopmen's strike in 1922.[2] And in *United States* v. *Hutcheson*, 312 U. S. 219, 227, the Court stated that "Concededly an injunction either at the suit of the Government or of the employer could not issue".

Although other sections of the Act are limited in their effect to suits for injunctions this is not true as to Section 6, as we have seen. Accordingly, in that respect it is easier to hold Section 6 applicable to criminal cases. But Section 6 differs from the sections dealing with injunctions (principally Sections 4 and 7) in that the latter apply to "cases involving or growing out of any labor dispute", whereas Section 6 in terms applies to an "association or organization participating or interested in a labor dispute." The question

---

[2] *United States* v. *Railway Employees' Dept., American Federation of Labor*, 286 Fed. 228 (N. D. Ill.). S. Rep. 163, 72d Cong., 1st sess., p. 8; 75 Cong. Rec. 4693; see Frankfurter and Greene, *The Labor Injunction* (1930) pp. 103, 108, 115, 174, 218, 253.

may arise as to whether the dispute covered by Section 6, which does not in terms apply to cases merely involving or growing out of labor disputes, must be between the parties to the law suit.

A "labor dispute" is defined in Section 13 (c) as including "any controversy concerning terms or conditions of employment * * * regardless of whether or not the disputants stand in the proximate relationship of employer and employee." The last clause was intended to overcome the decisions of this Court involving secondary boycotts.[3] But it seems to assume that the case will be between "disputants" to the labor dispute, and the United States is not within that category.

It is also arguable that the words "participating or interested in" Section 6 show that that Section only applies to cases between the adverse parties to a labor dispute. This is a narrower phrase than "involving or growing out of". The Section could not have been intended to apply to all persons or associations "interested in a labor dispute" where the case has nothing whatsoever to do with the dispute.[4]

We are disinclined to press the arguments which could be based upon these verbal distinctions, in-

[3] *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443; *Bedford Cut Stone Co.* v. *Journeymen Stone Cutters' Assoc.*, 274 U. S. 37.

[4] E. g. Persons participating in a labor dispute might be parties to an automobile accident or a will case.

asmuch as we do not think they are consistent with the over-all intention of Congress. If the Section is read in the context of the remainder of the Act and its history, we think that it was intended to reach cases growing out of labor disputes of the type subject to the remainder of the statute. Furthermore, inasmuch as the rule prescribed by Section 6 is in substance the proper criterion, we do not think that the question of its applicability is too significant.

D

Whether Section 6 of the Norris-LaGuardia Act applies to associations of employers as well as of employees

We interpret the Court's third question as to the scope of the words "association" or "organization" in Section 6 of the Norris-LaGuardia Act as directed to whether that Section applies to associations of employers as well as to associations of employees. We have never suggested that these expressions do not apply to the petitioning labor unions.

Section 6 applies to any "association or organization participating or interested in a labor dispute." The quoted phrase is defined in Section 13 (b). The last portion of the definition includes a person who "is a member, officer, or agent of any association composed in whole or in part of *employers* or employees engaged in such industry,

trade, craft, or occupation." The inclusion of the word "employer" would seem clearly to indicate that associations of employers were meant to be covered by Section 6.

The legislative history of the Section makes this plain. The Senate Committee Report (S. Rep. No. 163, 72d Cong., 1st Sess., p. 19) stated:

> * * * it will be observed that this section, as do most all of the other prohibitive sections of the bill, applies both to organizations of labor and organizations of capital. The same rule throughout the bill, wherever it is applicable, applies both to employers and employees, and also to organizations of employers and employees.

An identical statement was made by Senator Norris in explaining the bill on the floor of the Senate. 75 Cong. Rec. 4507. There was also discussion in the Senate as to the extent to which the bill would prevent employees from bringing injunction suits against employers; it seems to have been assumed in this discussion that the Act would reach such suits, although it was not anticipated that many would be brought. 75 Cong. Rec. 4777–4778, 4936–4938. On the floor of the House, Representative O'Connor, who presented the committee report, stated that (75 Cong. Rec. 5463):

> * * * Section 6, which, like the other section of the bill, applies alike to organizations of employees as well as employers * * *.

Although Congress obviously was not attempting to protect employers, we are forced to the conclusion that the Act applies to suits against them as well as to suits against employees. We think that this may be of some significance in determining whether and to what extent Congress intended Section 6 to change pre-existing agency principles. For since there was no desire to afford employers any greater protection than they had enjoyed theretofore, the application of the Act to them supports the inference that it was intended to raise the employees' rights to the level of the general doctrines of agency rather than to give employers and employees greater freedom from liability. See pp. 17–25, *infra*.

For reasons previously noted (p. 3, *supra*), the applicability of the Act to employers is otherwise of no consequence in this case.

E

The scope of the rule prescribed in Section 6

For the reasons stated above we shall assume that Section 6 applies to this case. The question still remains as to what that Section means.

In particular, the issue relates to the phrase "actual authorization." Does this mean that there must be express authority to do a particular act, or are acts reasonably regarded as within, or implied from, a general grant of authority also included whether or not expressly authorized?

The latter test is, of course, no different from the ordinary agency doctrine that a principal is liable for an agent's acts "within the scope of his authority", although it would not include liability for acts done within the agent's "apparent authority". We think that the history of the Act shows no intention to require an express authorization for each individual act. "Actual authorization" in our view comprehends conduct of a sort which a labor organization would assume its officers would undertake from the general authority granted them.

The statutory requirement as to "clear proof as to authority" may be said to impose a new requirement, at least in civil cases, since that phrase seems to demand more than merely proof by a preponderance of the evidence. But "clear proof" does not seem to be as stringent a test as the orthodox criminal requirement that proof be "beyond a reasonable doubt". Thus the clear proof test would not increase the burden in criminal cases irrespective of its effect in civil cases.

1. *The evil sought to be remedied by Section 6 was the imposition of liability upon unions and union officials for the unauthorized acts of violence of individual members on the basis of the doctrines of conspiracy law*

The evil at which Section 6 was directed was not the type of situation involved in this case.

Congress was not concerned with exculpating labor unions from liability for contracts made or approved on their behalf by their appropriate officials, but with the protection of the unions, and their officers and members, against liability in damages for the "violent deeds" of individual members or strikers, frequently instigated by company spies, even when such conduct was contrary to the instructions of the union officials and expressly disavowed. That the Section was concerned solely with the problem of liability for individual acts of violence in strikes is apparent from its legislative history. The pertinent excerpts from the Senate Committee Report (S. Rep. 163, 72d Cong., 2d sess., pp. 19–20) tell the story:

> * * * It has often occurred that employers themselves have secured the services of detectives who, under the guise of labor men, have gained admission into labor unions. When this happens these detectives are usually doing everything within their power to incite employees who are on strike to commit acts of violence, and such detectives, contrary to the definite instructions of labor union leaders, sometimes commit unlawful acts for the express and only purpose of laying the foundation for injunctive process, of bringing discredit upon the union, and of making its officers and members liable for damages.
>
> In case of a strike, where the officers of the labor union are doing everything within

> their power to prevent acts of violence from being committed by any person, the law should fully protect them and save them and the members of their organization who are following their advice from liability in damages because of unlawful acts of persons who are either directly or indirectly connected with those who are trying to defeat the purposes of the strike.
>
> * * * * *
>
> According to the same reasoning, why should an officer of a labor union, who has specifically advised members that violence must be avoided, become responsible for the hot-headed action of some member in perhaps assaulting a strike breaker? * * *

The same theme frequently recurred in the debate in the Senate. Senator Walsh of Montana stated that (75 Cong. Rec. 4773–4774):

> * * * This provision of the bill is intended to protect the officers of a labor union from responding in damages for injuries to personal property done by some of the strikers, notwithstanding they had absolutely nothing to do with it and cautioned everybody to avoid anything of that character.
>
> The principal officers of these national organizations, some of whom have accumulated some property in the course of their experience, are under the constant apprehension of having all of their property swept away by a judgment against them

from any liability as conspirators. The meaning of Section 6 was extensively discussed during the hearings held before a Senate subcommittee in 1928 on a predecessor to the Norris-LaGuardia Act. See Hearings before Subcommittee of Senate Committee on Judiciary, S. 1482, 70th Cong., 2d sess, pp. 759–763. In reply to the criticism of Mr. Walter Gordon Merritt that Section 6 was enacting a special rule of agency for a special class, Senator Blaine, one of the sponsors of the bill, declared (p. 760):

> Senator BLAINE (*interposing*). I might state, Mr. Merritt, the intention was to apply the law of agency as it applies in other cases to labor unions. If we have not done it, I would like to know what we can do to do that.
>
> Mr. MERRITT. Is there any case in existence where any labor union has been held responsible where the ordinary rule of agency has not been applied?
>
> Senator BLAINE. I do not think they apply the rule of agency at all, Mr. Merritt.
>
> * * * * * * *
>
> In the Loewe case they applied a special rule as the law of agency. It was not the law of agency at all. It was a law applied to that industrial dispute that was far beyond and far outside of the ordinary law of agency. * * * Now that is what we want to prevent, and we want to apply the general rule of agency that applies to all other organizations.

Subsequently, Mr. Merritt and Senator Blaine engaged in the following colloquy (pp. 762–763):

> Mr. MERRITT. Then I understand that so far as section 6 is concerned the purpose is not to alter or modify the law of agency. Is that correct?
>
> Senator BLAINE. It is to apply the law of agency.
>
> Mr. MERRITT. It is not to modify it?
>
> Senator BLAINE. I think it is to apply it.
>
> * * * * * *
>
> Senator BLAINE. I have this memorandum which I can refer to which gives the purpose of this section 6. This is merely the application of the sound principles of the law of agency to labor cases. It has become necessary because the Federal courts in many cases have held the union or members not connected with the unlawful acts responsible for those acts although proof of actual authorization or ratification is wholly lacking.
>
> Now, that is the law of agency, and we want to apply that. We want to apply that for this reason, that if it is unjust to hold all members of the union responsible for the acts of its officers and their members merely because of such membership, similarly it is unjust to hold the officers responsible during the strike merely because they pass on questions of this kind, that an attempt is here made to recognize the rules of law of agency in labor cases.

for damages by reason of some injury done by some one who participated in a strike.

Senator Walsh further stated (*id.*, p. 4929)

> Here is a great national organization, and some individual being a member of a constituent organization makes a threat that he is going to do some damage to the property of the employer. Or, we will say, even some local union makes a threat that it is going to do some damage. I do not want an injunction to go against the officers of the national organization, who perhaps have sent out instructions that every effort is to be made to preserve order and to prevent unlawful acts by anyone. Yet these injunctions go, and have gone repeatedly, against the national officers who have taken those very precautions, because some subordinate union or some irresponsible individual has made threats or actually done damage. * * *

See also 75 Cong. Rec. 4693; Frankfurter and Greene, *The Labor Injunction* (1930), 74–75.

The liability of the unions and their officers for the conduct of individual members or strikers had not been predicated upon agency principles, for, as Senator Walsh stated, the members were not the agents of the officers or unions. Liability rested on an erroneous application of the principle of conspiracy law that all members of the conspiracy are responsible for what any of the conspirators may do.

In issuing injunctions against unions and their members engaged in strikes, some federal courts, in determining responsibility for acts done by union members, had treated them as unlawful conspiracies and had applied the principle "that every member of a conspiracy is responsible for every act committed by any other member of the conspiracy";[5] failed to distinguish between a combination to conduct a lawful strike and a conspiracy to do an unlawful act;[6] assumed the existence of an illegal conspiracy because of the unlawful conduct of a few members, even though the latter was contrary to the advice of union officials and expressly disavowed;[7] and issued injunctions against all union members and represent-

---

[5] Statement by Senator Walsh of the Committee on the Judiciary (75 Cong. Rec. 4693).

[6] Statement of Senator Wheeler (75 Cong. Rec. 4935).

[7] S. Rep. No. 163, 72d Cong., 1st sess., pp. 19–20. See Frankfurter and Greene, *The Labor Injunction* (1930) 74–75:

"* * * The union and its officers may repudiate the violent deeds, may solemnly disavow them, may importune the strikers to be orderly and law-abiding, and yet may be held. 'Authorization' has been found as a fact where the unlawful acts have been on such a large scale, and in point of time and place so connected with the admitted conduct of the strike, that it is impossible on the record here to view them in any other light than as done in furtherance of a common purpose and as part of a common plan'; where the union has failed to discipline the wrong-doer; where the union has granted strike benefits. Other courts, contrariwise, have held fast to general agency principles and have exacted the full quantum of proof normally required to establish the responsibility of one person for the acts of another."

atives participating in a strike without requiring proof of the existence of an illegal conspiracy, or of authorization or participation therein, or of ratification of the unlawful acts when done.[*]

The reports and the debates show that this was the mischief sought to be removed. This appears clearly from the following explanation given by Senator Walsh (75 Cong. Rec. 4693):

> There is a principle of law to the effect that every member of a conspiracy is responsible for every act committed by any other member of the conspiracy, whether he participates in the act or not. So, Mr. President, the officers of a union declaring and endeavoring to manage a strike, although they may exercise every power at their command to restrain all acts of violence, however such acts may be provoked, are held answerable. I might say in this connection that the courts have repeatedly said that in the case of strikes there are probably acts of violence upon both sides. There is the strike breaker on the one side and the striker on the other side, each actuated by powerful passions and each filled with bitterness toward the other, so that clashes are very likely to ensue; so that, however the officers of the organization may exert themselves in order to prevent violence, it will occur. They issue bulletins urging all their members to observe the law, to do nothing beyond the limits of what the

[*] 75 Cong. 4927–37.

law will permit, and they even punish and restrain their members who have been shown to have violated such instructions. No matter what they do, violence will ensue, in all reasonable probability; and if the court finds that a conspiracy exists they become answerable for every act committed by any of those who are alleged to be within the conspiracy. That is entirely unjust. So that suits are brought against the officers of the unions to recover damages from them for all injuries done, either to person or property, by anybody who is connected with the strike, upon the ground that it is done by one of the conspirators, and all conspirators are liable.

The bill presented by the majority seeks to relieve the officers of the unions engineering a strike from liability to respond in damages for any loss sustained by the acts of anyone unless done by their authority, either express or implied, or unless they have afterwards ratified the unlawful acts.

See also Frankfurter and Greene, *The Labor Injunction*, pp. 61, 177–178.

2. *The history of Section 6 shows that it was not intended to abrogate the application of the principles of the law of agency*

The legislative history shows, on the other hand, an intention not to abrogate the general liability of labor organizations and their officers on agency principles—that is, the liability of a union for what its officials are authorized to do, as distinct

Before the bill appeared in the Congress which finally passed it, one of those who helped draft the measure stated with respect to Section 6 that it "applies accepted doctrines of agency to labor litigation". Frankfurter and Greene, *supra*, p. 221n.

The Senate committee report defended the bill against those who assail it as establishing a new law of agency on the ground that it merely establishes "a rule of evidence," obviously referring to the requirement as to "clear proof". S. Rep. 163, p. 19. The report then goes on to state that the opposing argument is based upon the rule in negligence law that a man is responsible for the acts of his agents "in due course of employment", not the rule of the criminal law that one is responsible only "on the basis of actual or implied participation".[9]

---

[9] The pertinent portion of the Senate Report (S. Rep. 163, 72d Cong., 1st Sess., pp. 19–20) reads as follows:

"Opposition to this section has been voiced on the ground that it seeks to establish a 'new law of agency.' In the first place, this section is concerned especially with establishing a rule of evidence. There is no provision made relieving an individual from responsibility for his acts, but provision is made that a person shall not be held responsible for an 'unlawful act' except upon 'clear proof' of participation or authorization or ratification. Thus a rule of evidence, not a rule of substantive law, is established. 'The general power of every legislature to prescribe the evidence which shall be received and the effect of that evidence in the courts of its own government,' has been repeatedly upheld by the Supreme

This report by itself is not too clear on the point here in question, and, if that were all there were, might not be regarded as supporting the Government's present contention. But the subsequent House Report submitted by Mr. La-

---

Court. (See *Fong Yue Ting* v. *U. S.*, 149 U. S. 698, 749; *Bailey* v. *Alabama*, 219 U. S. 219, 238.)

"But the argument is made that a man is held legally responsible for the acts of his agents taken in due course of employment. This argument is evidently based upon a doctrine of the civil law of negligence. It has no application to the criminal law. If a man is held responsible for an unlawful act, his responsibility rests on the basis of actual or implied participation. He is responsible for conspiring to do an unlawful act or for setting in motion forces intended to result, or necessarily resulting, in an unlawful act.

> Strictly speaking, the legal relation of principal and agent does not exist in regard to the commission of criminal offenses. All who participate in the commission of such offense are either principals or accessories. (*Anderson* v. *State*, 22 Ohio State 305.)
>
> But where the agent's criminal act is unauthorized and is not sanctioned or acquiesced in by the principal, especially where it is contrary to the principal's direct instructions, the latter can not be held criminally responsible therefor. (Clark and Skyles, *Law of Agency*, Vol. I, p. 1140.)

"The distinction should be clear. A man operating a dangerous machine negligently injures someone, and the negligence is imputed to the employer. But, there is a distinction between the torts of an employee and the crimes of an employee, and criminal responsibility is not to be imputed. If the president of a corporation sends a bill collector to persuade a debtor to pay a bill, instructing him to collect it in a peaceable manner, he does not become responsible for an assault by his employee upon the debtor."

Guardia expressly declares with respect to Section 6 that "this provision does not affect the general law of agency". House Report 669, 72d Cong., 1st Sess., p. 9. When read with the remainder of the passage, this statement indicates a belief that the "actual authorization" test was entirely consistent with general agency principles.[10]

In the debate in the Senate, the bill was defended on the floor by Senators Blaine, Wheeler, Walsh and Bratton.[11] Senators Hébert and Reed were critical of Section 6 because, in their view, it changed the rules of agency. 75 Cong. Rec. 4687, 4773, 4938, 5018. The sponsors of the bill met this objection not with a confession and avoidance but with a denial. Senator Blaine declared (75 Cong. Rec. 4629):

---

[10] The pertinent provision of the House Report (No. 669, 72d Cong., 1st sess., p. 9) states with respect to Section 6: "* * * This section speaks for itself and is desirable because both individuals and associations have been held liable for unlawful acts of overzealous members which acts were neither authorized nor ratified by the officer or association *and were entirely without the scope of any authority* committed by the officer or association of the offending member.

"*This provision does not affect the general law of agency*, and it is necessary, under the circumstances, that the courts should know that Congress expects them not to hold officers or associations liable for the unlawful acts of a member without clear proof of actual participation in, or authorization of, any unlawful acts by the officer or association." [Italics supplied.]

[11] All but Senator Wheeler were members of the Committee on the Judiciary.

> Section 6 is to extend the sound law of agency which prevails in all other business transactions to the officers, the members, the agents of organized labor.

In reply to Senator Hebert, Senator Walsh stated that (75 Cong. Rec. 4774):

> The trouble with the argument of the Senator from Rhode Island is that the relation between the officers of the union who are engineering the strike, and one of the strikers in a remote portion of the country, is not that of master and servant, or of employer and employee, or of agent and principal. The doctrine of agent and principal has no application to the thing. If the person perpetrating the offense, destroying the property or injuring the property or injuring the person, stands in the relation of an agent to some one else, the some one else is of course responsible for all the injury done by the agent.

And the statement of Senator Wheeler is even more explicit in indicating that labor unions shall be governed by the same rule as to liability for acts done within an official's scope of authority (as distinguished from scope of employment) as are corporations. 75 Cong. Rec. 4937. Senator Wheeler stated:

> I merely want to call the attention of the Senator from Oregon to the fact that the only way a corporation can be represented is through its agent. If the agent does something that is not authorized by

the corporation, the corporation can not at the present time be enjoined. The only time it could be enjoined, the only occasion when the railroad employees could enjoin it, would be when the agent of the corporation was doing something that he was authorized to do by the corporation itself.

Mr. REED. Does the Senator mean to say that the principal is liable only for acts which are authorized?

Mr. WHEELER. I mean acts which the agent is doing in the ordinary scope of his employment.

Mr. REED. That is different.

Mr. WHEELER. The scope of his authority—that is the way in which I meant to make the reference—but this case is entirely different from what the Senator contends. All we are contending with reference to the labor unions is that the labor unions shall not be enjoined because of the fact that somebody belonging to a labor organization does something that he is not authorized to do or something that is not within the scope of his employment.

That the section was designed merely to confirm the existing law applied by what were regarded as the better courts was also suggested by Senator Bratton, who indicated his belief that the courts were not justified, irrespective of the new statute, from issuing sweeping injunctions because of the conduct of a few members of a union. 75 Cong. Rec. 4934–4935.

When the bill came before the House a brief explanation of Section 6 was given by Representative O'Connor. He declared that if the Section "be a change in the 'law of agency,' as some claim, it is at most a change in the rule of evidence in civil cases only, a power well recognized as lodging in Congress." 75 Cong. Rec. 5463. This would seem to refer to the "clear proof" requirement, which not only is the only change in the law of evidence contained in the section, but which applies only to civil cases inasmuch as the burden in criminal cases is greater in any event.

We believe it fair to infer from the history of the statute as a whole that Congress intended the Act to reaffirm the sound agency principles which many courts had disregarded in labor cases, with perhaps a new evidentiary rule in civil cases as to the necessity of "clear proof".

3. *Under Section 6 corporations and labor organizations are liable both civilly and criminally for the conduct of their governing officers within the scope of a general grant of authority; express authorization to do a particular act is unnecessary*

The question remains as to the precise content of the law of agency applicable to labor organizations. The fact that under the Act the same principles apply to employers, who are normally corporations, and the statement by Senator Wheeler analogizing the liability of unions to that of corporations point the way to the correct test.

In cases involving individuals it is often stated that the principal is only criminally liable for his own acts and for those of his agent which he has expressly assisted or encouraged. E. g., *Paschen* v. *United States*, 70 F. 2d 491, 503 (C. C. A. 7); *United States* v. *Corlin*, 44 F. Supp. 940, 946 (S. D. Cal.); 2 Mechem, *Agency* (2d ed., 1914) Sec. 2006; 22 C. J. S. 149–150. But see 1 Wharton *Criminal Law* (12th ed, 1932) pp. 374–376. An exception to this rule has been recognized for statutory offenses in which an evil intention is unnecessary, where public policy requires that a business enterprise be responsible for the unlawful acts of its staff whether or not expressly authorized. See Mechem, *supra*, Sections 2007–2008, Wharton, *supra*. Sherman Act cases might well fall within this class, since neither evil intention nor wilfullness is an element of the statutory offense (*cf. United States* v. *Patten*, 226 U. S. 525, 543; *United States* v. *Reading Co.*, 226 U. S. 324, 373; *Addyston Pipe and Steel Co.* v. *United States*, 175 U. S. 211, 243), and since the Act was designed to protect the public against the conduct of a business enterprise.

It is unnecessary to go this far, however, as a less stringent rule has been applied to corporations than to individuals, especially in cases of the class last mentioned. For corporations, as distinct from individuals, cannot act except

through their officers and agents.[12] Since a corporation's charter never authorizes illegal conduct, a corporation could completely escape liability for unlawful acts by pleading *ultra vires* if express authority were required. Clearly the acts of a corporation's governing officials, at least, when acting on behalf of the corporation within the scope of the general powers delegated to them, are properly attributable to the corporation for criminal purposes as well as otherwise.

This Court so declared in *New York Central R. R. Co.* v. *United States*, 212 U. S. 481, a case which involved the allowance of unlawful rebates by the freight traffic manager and assistant freight traffic manager of a railroad. The Court there said (pp. 494–495):

> But there is a large class of offenses, of which rebating under the Federal statutes is one, wherein the crime consists in purposely doing the things prohibited by statute. In that class of crimes we see no good reason why corporations may not be held responsible for and charged with the knowledge and purposes of their agents, acting within the authority conferred upon them. 2 Morawetz on Corporations, § 733;

[12] "It should also be remembered that as it is only by agents that corporations can act, it is not necessary to prove, on charging a corporation with a criminal act committed by an agent within his range of duty, that this act was specifically authorized by the corporation." 1 Wharton Crim. Law (12th ed.; 1932) pp. 375–376.

> Green's Brice on Ultra Vires, 366. If it were not so, many offenses might go unpunished and acts be committed in violation of law, where, as in the present case, the statute requires all persons, corporate or private, to refrain from certain practices forbidden in the interest of public policy.

The problem has not since been presented to this Court, although in *United States* v. *Dotterweich*, 320 U. S. 277, 281, the Court noted that "the only way in which a corporation can act is through the individuals who act on its behalf." A number of decisions in the lower courts, however, have reached the same conclusion. *Egan* v. *United States*, 137 F. 2d 369, 379–380 (C. C. A. 8), certiorari denied, 320 U. S. 788; *Minnsohn* v. *United States*, 101 F. 2d 477, 478 (C. C. A. 3); *C. I. T. Corp.* v. *United States*, 150 F. 2d 85, 89–90 (C. C. A. 9); *Zito* v. *United States*, 64 F. 2d 772, 775 (C. C. A. 7); *United States* v. *Wilson*, 59 F. 2d 97, 98–99 (W. D. Wash.); *United States* v. *Nearing*, 252 Fed. 223 (S. D. N. Y.).

Recently, in *Egan* v. *United States*, 137 F. 2d 369 (C. C. A. 8), certiorari denied, 320 U. S. 788, a corporation and its president were convicted under the general conspiracy statute (18 U. S. C. A. § 88) for conspiring to violate the Public Utility Holding Company Act (15 U. S. C. A. § 79l (h)), which Act prohibited the making of political contributions by any registered public utility holding company. The corporation in-

sisted that its officers were not authorized to make such contributions either by express or implied authority of the board of directors, and that since such contributions were unlawful under the statute, the acts of the officers were *ultra vires*.

In affirming the conviction of the corporation the Circuit Court of Appeals said (pp. 379–380):

> The test of corporate responsibility for the acts of its officers and agents, whether such acts be criminal or tortious, is whether the agent or officer in doing the thing complained of was engaged in "employing the corporate powers actually authorized" for the benefit of the corporation "while acting within the scope of his employment in the business of the principal." If the act was so done it will be imputed to the corporation whether covered by the agent or officer's instructions, and whether lawful or unlawful. Such acts under such circumstances are not ultra vires even though unlawful. There is no longer any distinction in essence between the civil and criminal liability of corporations, based upon the element of intent or wrongful purpose. Malfeasance of their agents is not ultra vires. *Washington Gas Light Co.* v. *Lansden*, 172 U. S. 534, 19 S. Ct. 296, 43 L. Ed. 543; *New York Cent. & H. R. R. Co.* v. *United States, supra; Joplin Mercantile Co.* v. *United States*, 8 Cir., 213 F. 926, 935, 936, Ann. Cas. 1916, 470; *United States* v. *Nearing*, D. C. N. Y., 252 F. 223, 231;

Mininsohn v. *United States*, 3 Cir., 101 F. 2d 477, 478; *Zito* v. *United States*, 7 Cir., 64 F. 2d 772, 775.

* * * * * *

> There was abundant evidence to authorize the jury to find that Union Electric's officers in making political contributions were engaged in the business of the company, "employing the corporate powers actually authorized" for the benefit of the company, while acting, although illegally, within the scope of their employment.

We submit that the same principles apply to the liability of a labor organization for the acts of its officials within the scope of the authority actually delegated to them. The Norris-LaGuardia Act was not designed to free labor unions from liability for such conduct of their officers, but from liability for the acts of individual members in no way authorized to bind the union. As we have seen, *supra*, pp. 17–25, the history of the Act shows that the unions were to be governed by the same agency principle as corporations.

No extensive argument should be necessary to support our position that the modern labor organization, like the corporation, should be treated as an entity and not as a mere partnership of individuals. As this Court pointed out in the first *Coronado* case (*United Mine Workers* v. *Coronado Co.*, 259 U. S. 344, 385):

> No organized corporation has greater unity of action, and in none is more power centered in the governing executive bodies.

This is even more true now than in 1922. And the union, like the corporation, customarily acts through its officers and governing bodies.

The *Coronado* cases [13] recognized that under the Sherman Act the same rule may be applied to a labor union as to a corporation. In the first of the cases, the Court declared (259 U. S. at 395):

> A corporation is responsible for the wrongs committed by its agents in the course of its business, and this principle is enforced against the contention that torts are *ultra vires* of the corporation. But it must be shown that it is in the business of the corporation. Surely no stricter rule can be enforced against an unincorporated organization like this. Here it is not a question of contract or of holding out an appearance of authority on which some third person acts. It is a mere question of actual agency which the constitutions of the two bodies settle conclusively.

Although the *Coronado* cases were not criminal cases, we believe that in so far as the acts of the governing officials of the unions are concerned the analogy between the labor organization of today and the corporation extends to criminal liability as well. We recognize that in the *Coro-*

[13] *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344; *Coronado Coal Co.* v. *United Mine Workers*, 269 U. S. 295.

nado cases the International Union was held not responsible for the conduct of its president or the local organizations. But this was on the ground that the former was not acting within the scope of its authority in dealing with the local strike, and that the latter had no authority to commit the International. The facts in the present case are entirely different, as we shall show.

The pertinent phrase of Section 6 of the Norris-LaGuardia Act is "actual authorization of such acts." Although this obviously excludes liability for acts merely within an agent's "apparent authority", it does not require express permission to perform a designated particular act. If it did, the sponsors of the legislation would not have insisted that Section 6 merely embodied the accepted principles of agency. An agent is "actually authorized" to perform an act when he is expressly or impliedly told or advised by his principal that he may engage in conduct of a class which comprehends that act. As Senator Wheeler stated on the Senate floor in explaining the bill (*supra*, p. 24), Congress was only attempting to prevent the issuance of injunctions against unions because some member of a union did something which either was not authorized or was not within the scope of his authority. (75 Cong. Rec. 4937.)

A union cannot escape responsibility for acts of officers authorized to enter into contracts for it on the plea that only lawful contracts were authorized and that the charter does not expressly

authorize the officers to violate the Sherman Act or any other law. A charter obviously would never contain an authorization to do anything unlawful. If an agent acts within the scope of his authority, that is, within the limits of what the principal has authorized him to do on its behalf, he is doing what he has in fact or "actually" been authorized to do.

United States v. *International Fur Workers Union*, 100 F. 2d 541 (C. C. A. 2), certiorari denied, 306 U. S. 653, does not support the petitioners' contention. In that case the trial court charged that a union would be criminally liable if its officers acted "upon behalf of the unions." As this instruction excluded the issue whether the union had authorized or ratified what its officers had done, the Circuit Court of Appeals correctly held it to be erroneous. Obviously the unauthorized action of union officers cannot be chargeable to the union even if done "upon behalf of the union." In the present case, on the other hand, the instructions specifically covered the question of authorization.

Truck Drivers Local No. 421, etc. v. *United States*, 128 F. 2d 227 (C. C. A. 8), also lends no support to the petitioners' argument. The court there held that where, under the rules of the general union, the acts of a division must be approved by the union to make them binding on that body, the general union was not liable under the Sherman Act for unapproved action of the division.

The court made it clear, however, that the union was liable for action it had authorized, whether expressly or impliedly. The court said (pp. 235-236):

> To bind the union in a situation such as this, actual and authorized agency was necessary; mere apparent agency would not be sufficient to take the matter to the jury, unless the circumstances were so strong as competently to support an inference of actual authority.
>
> * * * * *
>
> We do not mean to imply that the union had to approve the action of the milkmen's division by formal motion or resolution. Such approval might perhaps legally be found to exist from actual knowledge and general sanction on the part of the union body of the efforts of the milkmen's division to cast the strength of the union into the situation.[14]

---

[14] United Brotherhood (Original Br. p. 56) quotes out of context a statement in the concurring opinion of Clark, J., in *United States* v. *Local 807 of I. Brotherhood*, 118 F. 2d 684, 668 (C. C. A. 2), affirmed on other grounds, 315 U. S. 521. The full quotation is as follows:

"* * * I do not see how a conviction can be had against the unincorporated Local 807 under the Anti-Racketeering Act; in other words, 'person' in the act does not include such an amorphous group as this association of around 10,000 persons. It is hornbook law that, absent a clear legislative intent, an unincorporated association does not commit crimes, 7 C. J. S., Association § 17, p. 43; and *Congress has often shown that it knows how to include an association as a person when it so desires, as in the Sherman and Clayton Acts.* * * *." [Italics supplied.]

We submit that although Section 6 of the Norris-LaGuardia Act may be applicable here it means that corporations and labor organizations may be held liable for the conduct of their officials within the scope of the authority delegated to them. That is their "actual authority". Thus, if a union's charter empowers a particular official to enter into labor agreements on behalf of the union, he is engaging in an activity which has actually been authorized when he enters into such an agreement. It is with that type of situation that this case is concerned.

II

THE APPLICATION OF THE NORRIS-LAGUARDIA ACT TO THIS CASE

The Court has asked the parties to consider the District Court's "oral charge and written charges requested and refused involving Section 6, in the light of objections and exceptions by each and all of the defendants and the state of the evidence on that issue as to each of them".

A. *The charge*

The only portion of the charge which raises any serious issue is that relating to the liability of corporations and labor organizations, found at R. 1137–1138. This portion of the charge is subject to attack only by the labor union petitioners. Since it is not concerned with the liability of individuals, the individual petitioners, though

labor union officials, have no standing to object to it.[15] The employer groups are in no position to raise any question as to the validity of the charge. One group of employers, petitioners in Nos. 11 and 13 pleaded *nolo contendre* and did not stand trial. As they concede (see p. 3, supra), the only questions they may properly raise on appeal relate to the validity of the indictment, and not to errors in the trial in which they did not participate. Other employer groups did stand trial, but did not appeal, and of course they are not now before the Court.

The charge contained the standard instruction as to proof beyond a reasonable doubt (R. 1145, 1141–1142). In addition it contained the following provision dealing with the question of agency:

> You are to determine the guilt or innocence of a corporation by an examination of the acts done by its responsible officers or agents. The act of an agent done for or on behalf of a corporation and within the scope of his authority, or an act which an agent has assumed to do for a corporation while performing duties actually delegated to him, is deemed to be the act of the corporation.
>
> * * * * * *
>
> Likewise, the list of defendants include a number of labor union organizations

[15] The individual petitioners' objection to the failure of the trial court to give a requested charge is considered *infra*, pp. 42–44.

> * * *. It has been stipulated in this case that these labor unions are associations. Like corporations, associations are separate entities within the meaning of the Sherman Act, and may be found guilty of violations of that Act, separately and apart from the guilt or innocence of their members.
>
> You are to determine the guilt or innocence of the labor unions which are defendants in this case in the same manner as you determine that of the corporations, that is, by an examination of the acts of their agents.

If the principles which we have discussed on pages 10–35 *supra* are accepted as correct, the above charge was proper. We have argued that a labor organization, like a corporation, may in Sherman Act cases be liable criminally for the acts of its officers within the scope of their authority, and that the phrase "actual authorization" in the Norris-LaGuardia Act has not changed the prevailing law of agency in this respect. The two alternative methods of statement in the second sentence of the above quotation accurately set forth this criterion.

Petitioners' briefs do not seem to object specifically to the first expression—"the act of an agent done for or on behalf of a corporation and within the scope of his authority". This instruction in our view is in full accordance with the requirement of Section 6 of the Norris-LaGuardia Act. If an act is "within the scope of" an agent's

authority he is actually authorized to do it, as we have shown. And the same clearly is true if he is "performing duties actually delegated to him".

Petitioners' claim that the word "assumed" in the second clause implies that, apart from authority of any sort, acts which an agent assumes to do for his principal may make the latter criminally liable, and that such a doctrine would go further in imputing responsibility even than the rule in civil cases. We believe, however, that the second clause—"an act which an agent has assumed to do for a corporation while performing duties actually delegated to him"—merely expresses the same thought as the first in different language, and that if the word "assume" is read in its setting in the sentence petitioners' meaning can not be attributed to it. For the entire phrase clearly refers not to an act which an agent assumes to do during a period in which he is performing unrelated duties actually delegated to him, which no one contends would make a principal liable, but an act which the agent assumes to do within the range or scope of the duties actually delegated. Cf. *McKinney* v. *Dorlac*, 48 N. Mex. 149, 152, 146 P. 2d 867, 869, and *Vincent* v. *Powell*, 215 N. C. 336, 338, 1 S. E. 2d 826, 827, in which the phrases "while at work" and "while on duty" were held in the context to be synonymous with "in the course of his employment". By the same token "while performing duties actually delegated" would in its context in the

charge mean "in the course or scope of duties actually delegated".

This portion of the charge does not by itself, of course, satisfy the requirement as to "clear proof" in Section 6 of the statute. But the repeated charges as to the necessity of proving all elements of the offense beyond a reasonable doubt [16] go further than Section 6 requires in this respect.

---

[16] See the following portions of the charge at R. 1141–1142, 1145:

"In order to warrant you in finding a verdict of guilty against the defendants, or any of them, it is necessary that you be satisfied beyond a reasonable doubt that a combination and conspiracy as charged in the indictment was entered into between two or more of the defendants to violate the law of the United States in the manner described in the indictment. It is necessary further that, in addition to the showing of the unlawful combination and conspiracy; the Government prove to your satisfaction, beyond a reasonable doubt, that one or more of the acts described in the indictment was done by one or more of the defendants or at their direction or with their aid.

"Under the charge made the combination and conspiracy constitutes the offense and it must be made to appear from the evidence, beyond a reasonable doubt, before any defendant can be convicted, that such defendant was a party to the combination and conspiracy and that he continued to be such up to the time that acts were committed in furtherance thereof, if the evidence shows that there were any such. * * *

"* * * A defendant is presumed to be innocent at all stages of the proceeding until the evidence introduced on behalf of the Government shows him to be guilty beyond a reasonable doubt. And this rule applies to every material element of the offense charged. Mere suspicion will not authorize a conviction. A reasonable doubt is such a doubt as you may have in your minds when, after fairly and im-

The record in this case demonstrates why further amplification of the charge was unnecessary. Three of the labor-union petitioners [11] were actual parties to the illegal agreements. See pp. 50–56, *infra*. The fourth local involved, the Alameda Council, petitioner in No. 12, participated in the conspiracy through the acts of the Council itself, the governing body of the organization. See pp. 48–50, *infra*. And the International was charged with participation through approval of the agreement by the vice president expressly empowered by the charter to pass upon and approve the arrangements made by the local organizations. See pp. 45–48, *infra*. In these circumstances no problem as to the liability of unions for the violence or other misdeeds of individual members was presented, and there was no occasion for amplifying the charge in that respect.

It is true that the labor union petitioners requested the Court to give instructions substantially in the terms of Section 6. See Requested Instructions Nos. 55 and 56, set forth in the note

---

partially considering all of the evidence, you do not feel satisfied to a moral certainty of the defendant's guilt. In order that the evidence submitted shall afford proof beyond a reasonable doubt, it must be such as you would be willing to act upon in the most important and vital matters relating to your own affairs.

"Without it being restated or repeated, you are to understand that the requirement that a deefndant's guilt be shown beyond a reasonable doubt is to be considered in connection with and as accompanying all the instructions that are given to you."

[11] The petitioners in No. 10.

below[18]. The action of the trial court in refusing to give this instruction was proper, for, as we have shown, the instruction given had the same meaning as Section 6, properly construed (R. 1137–1138). Petitioners asked for instructions stressing the necessity for authorization by the unions of the acts of their agents and such instructions were given. Assuming that the instructions are correct and complete, the manner of phrasing them rests within the discretion of the court. *United States* v. *General Motors Corporation*, 121 F. 2d 376, 409 (C. C. A. 7), certiorari denied, 314 U. S. 618.

Requested Instruction No. 57 is similar, but raises the further question whether in order to impute liability to the international body its authorization must be express.[19] In *Washington*

[18] Requested Instructions Nos. 55 and 56 read as follows (R. 1172–1173):

55. You are instructed that an officer of a union which is an unincorporated association is not authorized merely by virtue of his office to make his union a party to an unlawful conspiracy. In order to bind any union organization, therefore, by the act of a representative or officer it is necessary to find that the union had authorized or ratified the act.

56. You are instructed that no labor union or organization can be found guilty in this case for an unlawful act or acts, if any, of individual officers, members or agents, unless you find upon clear proof from the evidence that such labor organization actually participated in, or actually authorized such unlawful act, if any, or ratified such an act, if any, after actual knowledge thereof.

[19] Requested Instruction No. 57 reads as follows (R. 1173):

You are instructed that an international trade union, that is, the international body, is not responsible for the acts of a

Gas Light Co. v. *Lansden*, 172 U. S. 534, this Court held the authorization of a corporation may be implied. The Court said (p. 544):

> The corporation can be held responsible for acts which are not strictly within the corporate powers, but which were assumed to be performed for the corporation and by the corporate agents who were competent to employ the corporate powers actually exercised. There need be no written authority under seal nor vote of the corporation constituting the agency or authorizing the act. But in the absence of evidence of this nature there must be evidence of some facts from which the authority of the agent to act upon or in relation to the subject-matter involved may be fairly and legitimately inferred by the court or jury.

The above doctrine was reaffirmed in the *New York Central Railroad* case, *supra*, p. 27, a decision involving liability in the criminal field. And see *Egan* v. *United States*, *supra*, pp. 28–30.

Requested Instruction No. 58 (R. 1174) contained a charge in the language of Section 6 with

---

district organization or union affiliated with and chartered by it except as such international body expressly authorizes the act of the local union or association. The International Brotherhood of Carpenters and Joiners of America cannot be found guilty in this case unless you find that it authorized acts to be done, or performed such acts with the intent of restraining interstate commerce pursuant to a conspiracy with the employer defendants to act as the instrument of the employers to suppress competition.

respect to the individual defendants.[20] Although this Instruction was refused, the charge contained a general provision (R. 1153) that—

> In this case, several individuals are named as defendants, together with a number of corporations. While these defendants have been jointly indicted and charged with the offenses contained in the indictment, each defendant is entitled to an independent consideration by you of the evidence as it relates to his conscious participation in the alleged unlawful acts, and it is your duty to determine the guilt or innocence of each individual separately. You will understand that you may convict or acquit any or all of the defendants as the facts may warrant. This applies to corporations, associations and individuals alike.

The only qualification as to this requirement of "conscious participation" was contained in the charge previously considered relating to corporations and labor organizations. Thus, in so far as the individual defendants are concerned, the court required "conscious participation in the alleged

[20] Requested Instruction No. 58 reads as follows (R. 1174):

"You are instructed that no individual defendant who is an officer or member of one of the labor organizations involved can be found guilty in this case for an unlawful act, or acts, if any, of other officers, members or agents of such union organizations, except upon clear proof from the evidence that such individual defendant actually participated in or actually authorized such an act or ratified such unlawful act, if any, after actual knowledge thereof."

unlawful acts", which is the normal rule for the criminal liability of individuals (*supra*, p. 26) and at least as strict a rule as that imposed by the Norris-LaGuardia Act.

B. *The evidence as to the various petitioners*

Although the Court has asked for a consideration of the evidence on the issue of authorization as to each of the defendants, we assume that it does not desire prolongation of this brief by a detailed discussion of such evidence as to those defendants who are making no claim that the evidence supporting their convictions is insufficient in this respect. No question as to the evidence has been or can be raised by the nonlabor defendants, who either did not go to trial or did not appeal. See p. 3, *supra*. Nor have the individual defendants raised any question in their petitions for certiorari or their original briefs in this Court as to the adequacy of the evidence on this issue as to them, although in response to this Court's question petitioners in No. 10 have summarized the evidence as to some of the individuals. See Supplemental Brief for the Petitioners in No. 10, pp. 16–20.[21]

Without conceding that these summaries are complete, we are content to rely on them to show that each individual petitioner therein discussed

[21] This discussion of the evidence as to the individual petitioners appears not to claim that the evidence as to them on this point was insufficient to support their conviction.

consciously and deliberately participated in the employer-employee combination, so that no question of authorization or agency can arise as to him. Five of the six individuals mentioned are admitted to have taken part in the negotiations leading up to the unlawful agreements or to have signed them. (*Id.* pp. 16–18.) As to the sixth, it is conceded that there was testimony that he advised a dealer not to bring in any ready-cut houses, apparently irrespective of whether they had the union label. *Id.*, at pp. 18–20.

We turn, therefore, to the evidence as to the petitioning unions, which we shall summarize. It should first be stated, however, that only two of these organizations, the United Brotherhood and Alameda County Council, have heretofore in this Court questioned the sufficiency of the evidence as to them on this issue. No such claims have heretofore been made by the Bay Counties District Council, Local No. 42 or Local No. 550, and we do not read the discussion of the evidence in their present brief as making any contention that the evidence as to them is insufficient.

1. *The United Brotherhood*

The constitution and by-laws of petitioner, United Brotherhood, provide that its General President "shall supervise the entire interests of the United Brotherhood (R. 461); that the First General Vice-President "shall have charge and issue the label" (R. 413); that the First Vice-

resident "shall have power to examine, approve or disapprove all local union, district council, state council or provincial council laws" (R. 413); and that the jurisdiction of the United Brotherhood "shall include all branches of the carpenter and joiner trade" (R. 461).

In compliance with the provisions of its constitution, the restrictive contract of 1938 was submitted to and approved by the First Vice-President of the United Brotherhood (R. 444–446) and was executed by petitioners Bay Counties District Council of the United Brotherhood, Millmen's Union No. 42, and Millmen's Union No. 550, in the name and as affiliates of United Brotherhood (R. 279, 288).

On May 26, 1939, the First Vice-President of the United Brotherhood approved the by-laws of petitioner Bay Counties District Council which provided that "in conformity with the agreement between the mill owners and millmen, the District Council will refuse to handle any material coming from any mill or shop that is working contrary to the prescribed number of hours contained in the foregoing Trade Rules, or are paying less than the wage scale hereinbefore quoted * * *." (R. 415, 416.)

Before approving the 1938 agreement and the 1939 by-laws of the Bay District Council, the First and Second Vice-Presidents of the United Brotherhood had been advised that the local unions in the Bay Area were refusing to install millwork

manufactured outside of California by a union shop paying lesser wages than those prevailing in the Bay Area (R. 480–485).

The evidence also shows that prior to the signing of the 1938 contract petitioners Local Unions Nos. 42 and 550, had protested against the importation of lumber products into the Bay Area and that this protest was referred to the "General Office" of the United Brotherhood (R. 447.) The United Brotherhood sent a representative who participated in the negotiations which resulted in the 1938 agreement (R. 1037–1038). Union petitioners' negotiating committee "would not do business" in the absence of the United Brotherhood's representative (R. 595). Progress of the negotiations with the millmen was reported to the United Brotherhood's General President (R. 1099–1100, 444). No agreements were signed until the "General Office" of the United Brotherhood had approved (R. 446, 594, 595).

The General President of the United Brotherhood participated in negotiations with the mill and cabinet manufacturers and assisted in the drafting of contract provisions relating to the non-shipment of millwork into the Bay Area (R. 900–901, 788, 897, 906–907, 1039, 439). Protests against the restrictive agreements from manufacturers outside the Bay Area were forwarded for the consideration of the Brotherhood's General President (R. 1089–1090, 1086–1087).

On September 20, 1938, the Brotherhood's Gen-

eral President wrote an official of the Santa Clara Valley District Council of Carpenters, which is composed of a number of local unions affiliated with the United Brotherhood, and the Brotherhood's field representative, with respect to Union petitioners' attitude toward the importation of material into the Bay Area as follows (R. 1091–1095, 1037–1038):

> In other words if they wish to continue to ship material into the San Francisco District, and use the label of the Brotherhood, it will be necessary that they pay a wage scale equal to that paid in the San Francisco area, and if they do not wish to pay that and want to continue to use the label they will have to agree not to ship material into that locality or any other locality paying a higher wage scale than that now being paid in your district.[22]

The Union petitioners complied with the instructions of their General President (R. 1039-1042).

2. *Alameda County Council*

With respect to petitioner Alameda County Building and Construction Trades Council the evidence shows that the written contracts of 1936 and 1938, each of which contained the restrictive agreement, were signed by United Brotherhood of Joiners & Carpenters of America Millmen's Union

[22] This letter refutes petitioner's argument that it was contrary to the policy of the United Brotherhood's officials to have the union label recognized in San Francisco irrespective of the wage schedule under which the goods were produced.

No. 550, one of the constituent bodies composing the Alameda County Building & Construction Trades Council (R. 279, 288). The Alameda County Council received letters from Petitioner Millmen's Union No. 550, protesting the importation of lumber products in violation of their agreement with the mill owners (R. 446–447, 499–500) and requesting the Alameda County Council's assistance in the enforcement of their agreement (R. 446–447, 499). Notations on the letters reveal that the Alameda County Council "concurred in" the attitude of Local Union No. 550 (R. 447) and the minutes of the Alameda County Council state that the request had been received and compliance therewith ordered (R. 499).

The minutes of Alameda County Council reveal further that on February 8, 1938, the President of Local Union No. 550 attended a meeting of the Alameda County Council and "called attention of the Council to the fact that the Millmen's Union were going to fight against the importation of special run matched end T & G as it is a direct violation of their agreement with the mill owners and should be manufactured in the Bay District" (R. 499–500); that on June 7, 1938, the Alameda County Council "concurred in" a recommendation of its business agents "that the council concur in the action of the teamsters and clerks and lumber handlers [members of United Brotherhood (R. 823)] in enforcing their agreement under which no lumber can be shipped directly from the

North to the job" (R. 500); that Alameda County Council actually participated in the enforcement of the agreement by examining a representative of an Oregon firm before the Council's Board of Business Agents on the subject of contract violation (R. 343, 345–347, 379); and that after procuring an assurance that the violation would not occur again (R. 378) the Alameda County Council "concurred in" a recommendation that the Oregon manufacturer "be notified that unless (if) he fails to live up to the agreement of the Millmen's Union, Teamsters, Clerks and Lumber Handlers, and Building Trades, he will be placed on the 'We don't patronize List'". (R. 378–379). Business Agents of the Alameda County Council assisted and participated in joint investigations conducted by union petitioners for the purpose of ascertaining contract violations (R. 379, 500–501).[23]

[23] Petitioner Alameda County Building and Construction Trades Council contends that there was insufficient evidence to hold it liable for the acts of its agents because "there was no proof of the nature of its 'fundamental agreement of association' and no proof of the powers or even of the existence of any of its officers or agents". The Council, as its name implies, is an association of local unions. Its participation in the conspiracy was through its own acts, as revealed in the minutes of its meeting, not through agents or officers. Under Section 8 of the Sherman Act the words "person" or "persons" are deemed to include corporations or associations, and the portion of the charge (R. 1142–1143) requiring participation by each defendant controls the case as to this petitioner irrespective of any question of agency.

3. Bay Counties District Council

Petitioner Bay Counties District Council of Carpenters of The United Brotherhood of Carpenters and Joiners of America (No. 667) was a party to the written agreements of 1936 and 1938 (R. 279, 288) and participated in the negotiations which resulted in these agreements (R. 828–829, 833). The Bay Counties Council had protested the importation of millwork into the Bay Area for over twenty years (R. 839), and on March 20, 1939, protested to the Board of Supervisors of the City and County of San Francisco against the awarding of a contract for cabinet and millwork to any firm located outside the City and County of San Francisco (R. 864). Its by-laws provide that it will refuse to handle any material which does not conform to "the agreement between the mill owners and millmen" (R. 416). These by-laws were approved by the United Brotherhood (R. 415).

The minutes of Bay Counties District Council's meetings show that the Buckley Sash and Door Company was placed on the Council's "unfair list" for "operating under non-union conditions and bringing practically all of their materials in from the North" (R. 418). Such material as the Sash and Door Company was permitted to receive from outside the Bay Area was marked "Exempted Material by the Bay Counties District Council of Carpenters" (R. 352).

Bay Counties Council submitted proposed changes in the 1938 agreement to the General President of United Brotherhood "for his approval before submitting it to the employers in the shops and mills within the Bay Counties District Council's jurisdiction for their approval" (R. 444–445). Bay Counties District Council's minutes show further that the Council "earnestly requested" its officers and delegates to give Local Union No. 42 their full cooperation in its request for assistance in keeping the work of shops and mills in outlying districts out of the City and County of San Francisco (R. 419).

Upon inquiry as to why it "secured practically nothing in the San Francisco Bay Area" after 1936 (R. 509), representatives of an Oregon firm were informed by the Secretary of Bay Counties District Council that there was an understanding with the local manufacturers in San Francisco regarding the ability of that company in getting its work into San Francisco (R. 478); that after a number of conferences, the cabinet manufacturers stated that they were willing to concede a reasonable wage scale, "provided some way could be worked out that would protect them against outside competition" (R. 517) and that such an agreement was consummated (R. 520); that although they realized that such an agreement was illegal, they were "going to proceed along these same lines until such time as the

Government stops us" (R. 517); and that the Bay Counties Council could not permit their firm's millwork to be used in the Bay Area although it paid "the same prevailing wage scale as exists in San Francisco at the time the equipment is shipped" (R. 517–518).

On November 29, 1939, Bay Counties District Council placed the Symon Bros. Company on their "We do not patronize list" and referred the matter "to the San Francisco Building Trades Council for action" (R. 420) because the company had "received two carloads of unfair material" and had refused "to go along with the program" (R. 278–279). This action by Bay Counties Council against Symon Bros. was requested by Millmen's Local No. 42 (R. 420). Symon Bros. was informed by a representative of Bay Counties Council that they would be required to buy their materials within the Bay Area (R. 254).

4. *Local No. 42*

Petitioner Millmen's Local Union No. 42 was a party to the 1936 and 1938 agreements (R. 279, 288), and its representatives participated in the negotiations which resulted in such agreements (R. 393, 594, 532, 1006). The minutes of its meetings show that it agreed with mill owners to boycott concerns that brought millwork into the Bay Area (R. 366); received reports from its agents relating to discussions with mill owners concern-

ing the material that would be allowed shipment into the Bay Area (R. 385); discussed "ways and means" to enforce its agreement with the mill owners (R. 386); received reports on the progress being made in keeping material "coming from the North" out of the Bay Area (R. 386–387); received requests from cabinet manufacturers and the Lumber Products Associations that additional agents be placed in the field in order more effectively to enforce their agreement (R. 389); placed additional business agents in the field to keep "in constant touch with the employer associations and the individual employers and obtain their cooperation" for the purpose of having "their work done in local plants, hiring members of this local union" and to "keep a constant check on all Retail Lumber Yards and wrecking and second-hand yards to see that the millwork and cabinets they sell are of local union made production and all related activities" (R. 553); placed non-cooperative firms on their "We do not patronize list" (R. 420); requested the cooperation of Bay Counties District Council in keeping the work of mills in outlying districts out of the Bay Area (R. 419); authorized its representatives to hold meetings with employees and employers' associations in the Bay Area "for the purpose of getting a uniform agreement" (R. 532); received reports concerning firms being placed on the "unfair list" by their business agents and promises received "not to

have any more (material) shipped into San Francisco" (R. 391–393)."

5. *Local No. 550*

Petitioner Millmen's Local Union No. 550, executed both the 1936 and 1938 agreements (R. 279, 288), was represented on the "Conference Committee" which negotiated the agreements (R. 819, 582), "worked jointly" with and made the "same demands" as Petitioner Millmen's Local Union No. 42 in the negotiations (R. 815). The minutes of its meetings reveal that it received "a résumé of the conferences with mill owners" and after a general discussion approved the "proposition submitted by the mill owners" by a secret ballot (R. 427); approved the 1936 agreement by a vote of 117 for and 16 against (R. 417) and the 1938 agreement by a vote of 104 to 2 (R. 584–586); requested all members to be on watch for imported non-union material (R. 427); placed pickets on "hot cargo" (R. 427); requested the

[a] Petitioner in No. 10 refers to the fact that Local No. 42 voted against acceptance of the agreement, and that the agreement was approved only by reason of the combined vote of No. 42 and No. 550. This statement in itself necessarily implies that Local No. 42 agreed to be bound by the combined vote, and the fact that No. 42 signed the agreements (R. 287, 290) shows that this was the situation. Local No. 42's adverse vote is understandable inasmuch as the agreement lowered its wage scale from $9 to $8.50, while raising No. 550's scale from $8 to $8.50. (R. 838.) Rejection of the agreement for this reason would, of course, not indicate any disagreement as to the policy of combining with employers to exclude incoming goods.

assistance of "The District Council and Building Trades Council" to help stop contractors from buying or using matched end T & G "coming in from the North in violation of our agreement" (R. 428); and was informed of the activities of its agents in making effective the terms of the agreement with mill owners (R. 583).

The minutes of the meetings of the Alameda County Building and Construction Trades Council reveal that the manager of the Pyramid Lumber Sales Co. "appeared before the Board at the request of Millmen's Union No. 550 to show cause why he should not be placed on the 'We Don't Patronize List'" and that representatives of Local No. 550 stated their case against the manager relative to his importing lumber into the Bay District (R. 378); and that agents of Local No. 550, in letters and visits at the meetings of the Alameda County Council, requested the assistance of the Council in the enforcement "of their agreement with the mill owners" concerning the importation of material into the Bay area (R. 446–447, 499–500).

We submit that the evidence is clear that the union petitioners actually authorized the acts of their officers and agents which form the basis of the conspiracy charged herein and for which the jury convicted. Such evidence is sufficient to satisfy even the most literal interpretation of Section 6. In addition, we submit that there was substantial evidence to support the finding of the

jury that all the union petitioners were parties to the conspiracy.

CONCLUSION

For the above reasons the judgment below should be affirmed.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General.
WENDELL BERGE,
Assistant Attorney General.
HOLMES BALDRIDGE,
VICTOR O. WATERS,
GEORGE P. ALT,
ROBERT L. STERN,
Special Assistants to the Attorney General.

APRIL, 1946

APPENDIX

The pertinent sections of the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. Section 101, *et seq.*, read as follows:

> SEC. 6. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.
>
> SEC. 13. When used in this Act, and for the purposes of this Act—
>
> (a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter

defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

U. S. GOVERNMENT PRINTING OFFICE 1932